

# **立法會**

## ***Legislative Council***

LC Paper No. CB(2)1157/17-18(07)

Ref : CB2/PL/FE

### **Panel on Food Safety and Environmental Hygiene**

#### **Background brief prepared by the Legislative Council Secretariat for the meeting on 10 April 2018**

#### **Issues relating to the operation of the Liquor Licensing Board**

#### **Purpose**

This paper provides background information on the establishment and operation of the Liquor Licensing Board ("LLB"), and summarizes major views and concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") over the work of LLB.

#### **Background**

##### Establishment and composition of LLB

2. Under the Dutiable Commodities (Liquor) Regulations (Cap. 109B) ("DCLR"), the sale or supply of liquor at any premises for consumption on those premises is prohibited except under a liquor licence. LLB is an independent statutory body established under regulation 2A of DCLR to consider liquor licence applications. LLB consists of a Chairman, a Vice-Chairman and nine other members, all appointed by the Chief Executive for a term of two years. The Food and Environmental Hygiene Department ("FEHD") provides secretariat support to and serves as the executive arm of LLB.

##### Procedures for considering liquor licence applications

3. Regulation 17(2) of DCLR stipulates that LLB shall not grant a liquor licence unless it is satisfied that:

- (a) the applicant is a fit and proper person to hold the licence;
- (b) the premises to which the application relates are suitable for selling or supplying intoxicating liquor, having regard to (i) the location and structure of the premises; and (ii) the fire safety and hygienic conditions in the premises; and
- (c) in all the circumstances the grant of the licence is not contrary to the public interest.

4. In considering a liquor licence application, LLB consults the relevant Government departments, including the Police, the Buildings Department and the District Office concerned of the Home Affairs Department ("HAD"), via FEHD's Licensing Office. These departments examine the application covering various matters including the background of the applicant, the condition of the premises and possible reaction of the neighbourhood, make analyses and assessments and provide advice to LLB through the established mechanism. The applicant is also required to place an advertisement on three local newspapers, and the same advertisement has to be posted on LLB's website for information and comment by relevant parties.

5. For cases with neither objection nor adverse comments, FEHD will approve the applications under the authority delegated by LLB. For contentious cases<sup>1</sup>, LLB will conduct closed-door meetings to consider the applications and decide whether it is necessary to conduct an open hearing. For contested cases<sup>2</sup>, LLB will conduct open hearings to listen to representations from the applicants, the objectors and the relevant Government departments. LLB arrives at a decision on each case after the relevant case has been scrutinized and deliberated, taking into consideration the views from relevant Government departments, the applicant and the objector(s). Pursuant to regulation 17(5) of DCLR, an applicant or residents to which the application relates may appeal to the Municipal Services Appeals Board if they are not satisfied with the decision made by LLB.

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<sup>1</sup> In these cases, LLB has received adverse comment(s) in relation to the liquor licence applications from members of the public or the relevant Government departments, but there is no objection.

<sup>2</sup> In these cases, LLB has received objection(s) in relation to the liquor licence applications from members of the public or the relevant Government departments.

### LLB's system of declaration of interests

6. According to information provided by the Administration to the Panel in November 2017, LLB adopts a two-tier reporting system for its members to make a declaration of interests, including:

- (a) the Chairman and members shall register in writing their personal interests on their first appointment to LLB, and annually thereafter, to the secretary of LLB, with related information being uploaded to the register of interests on LLB's website; and
- (b) the Chairman and members shall declare their interests and, if necessary, withdraw themselves from the relevant meetings prior to the discussion of any applications which may involve conflict of interests.

### **Members' views and concerns**

7. Members' major views and concerns over the work of LLB are summarized below.

### Criteria for considering liquor licence applications

8. Some members considered that the criteria adopted for considering liquor licence applications, as stated in paragraph 3 above, were rather abstract, in particular the "fit and proper person" test. They called on the Administration to devise more objective criteria for assessing applications, with a view to enhancing the transparency of the licensing procedures.

9. According to the Administration, to determine whether the statutory requirements under regulation 17(2) of DCLR were met, LLB generally required as a pre-requisite that the premises under application must have already been granted a restaurant licence by FEHD or a certificate of compliance or an exclusion order by HAD under the Clubs (Safety of Premises) Ordinance (Cap. 376), where location, structure, fire safety and hygiene conditions of the premises had been cleared by the concerned Government departments. To enhance transparency and to help the trade as well as the public better understand the criteria used in assessing liquor licence applications, LLB had promulgated the "Guidelines on Assessing Liquor Licence Applications" for public information.

10. In response to members' concern as to whether LLB adopted the same set of criteria for assessing liquor licence applications for upstairs bars and bars

located at street level, the Administration advised that the criteria for assessing liquor licence applications applied to all types of liquor-licensed premises. In view of the community's concern about the propriety of granting liquor licence for upstairs bars, LLB might impose additional licensing conditions, e.g. requiring the licensees to attend the "Seminar on liquor licensing" which covered various aspects pertaining to the management of upstairs bars including fire safety, and law and order; and imposing a more stringent capacity limit for these premises.

#### Transparency of operation of LLB

11. Noting that some liquor licence applications were considered at closed-door meetings, some members criticized LLB for lacking transparency in processing licence applications. There was concern that despite objection from the local communities and the District Councils concerned for causing nuisances, liquor licences were still granted or renewed. Members urged LLB and the Administration to carefully consider the views and comments made by the public in relation to liquor licence applications and conduct open hearings for contested and contentious cases.

12. The Administration stressed that under regulation 17(2) of DCLR, LLB was required to have regard to, among other considerations, the "public interest". In assessing an application, LLB would consider whether the premises were located in a predominantly residential or commercial area, and whether the operation of the liquor premises would cause nuisance to the residents nearby. In some cases, LLB would impose additional licensing conditions such as restricting the liquor selling hours and requiring front doors which faced the streets to be closed during specific hours, in order to minimize the nuisance. In essence, LLB adopted a fair approach in making reasonable arrangements for both the operators and the residents in the vicinity.

13. The Administration further advised that LLB normally conducted open hearings for contested cases. Some of the contested cases were considered at closed-door meetings because the objectors were not willing to attend open hearings and it would not be fair to the applicants to conduct open hearings under such circumstances. As regards contentious cases, LLB would hold closed-door meetings to consider whether it was necessary to conduct open hearings. During the closed-door meetings, LLB would decide whether liquor licence should be granted.

14. In response to members' views over the public engagement process, the Administration advised that FEHD would refer the liquor licence applications to relevant Government departments for advice. The District Offices would then gauge the views of nearby residents, District Council members and area

committees for LLB's consideration. As mentioned earlier, applications for liquor licence were required to be advertised on local newspapers. Notices in respect of the applications would also be posted on LLB's website and at conspicuous locations of the buildings in which the premises under applications were situated. There were sufficient opportunities and channels for the public to express views on the applications.

#### Processing time required for liquor licence applications

15. Concern was raised about the long processing time required for some liquor licence applications, in particular the slow progress of LLB in handling new liquor licence applications during the summer recess. According to the Administration, a number of improvement measures had been introduced with a view to enabling timely processing of liquor licence applications and minimizing the impact on those applications received in May and June of the year. Such measures included (a) a timeline (for processing an application for new issue received in May from the date of acceptable application to approval of application) had been worked out for licensing staff to follow so as to ensure that consideration of all acceptable applications by LLB should be held in July; and (b) a monitoring mechanism of the progress of each application with a report listing the milestones (such as receipt of acceptable application, referral to and reply from departments and posting advertisement, etc.) had been set up to ensure that all applications were processed within the agreed timeframe. Besides, FEHD would closely liaise with the LLB Secretariat to arrange hearings in July for cases received in May and in September (after the summer recess) for those received in early June.

16. The Administration reiterated that LLB had to consult the relevant Government departments on each application to ascertain whether the licensing requirements were met. The processing time for an application was contingent upon the complexity of the case in question, the handling of objections raised by the public or other departments concerned, if any, and the resolution of open hearings if held. During the period from 2007 up to September 2017, the average time taken for processing non-contested applications was 37 days, whereas that for contentious and contested applications was longer.

#### Composition of LLB

17. Pointing out that there was no representative from the general public in LLB and that the expertise and qualifications of some LLB members were not relevant to the work of LLB, some members doubted whether LLB could balance the interests of the trade and members of the public when considering liquor licence applications. These members urged the Administration to comprehensively review LLB in respect of its composition, functions,

operational transparency, mechanism for the handling of complaints etc., so as to ensure public interests were safeguarded.

18. According to the Administration, LLB comprised 11 members with representatives from various sectors, such as commercial, social service, education, legal, accountancy and catering. In appointing members to statutory bodies, the Administration would conduct an extensive and stringent examination of the background, experience and knowledge of the nominees. While all LLB members were appointed on the basis of individual merits, the current composition of LLB had struck a balance of interests among different parties.

### **Latest developments**

19. In October 2017, there were media reports about a dinner gathering attended by some LLB members (including the Chairman and the Vice-Chairman) at a restaurant operated by a relative of an LLB member, the liquor licence of which had been renewed by LLB at a closed-door meeting. The matter attracted public concern as to whether LLB had given preferential treatment to its member when processing the relevant liquor licence application. In response to the media reports, LLB subsequently issued a press release (see **Appendix I**). The Panel will discuss the operation of LLB at the meeting on 10 April 2018.

### **Relevant papers**

20. A list of relevant papers on the Legislative Council website is in **Appendix II**.

Council Business Division 2  
Legislative Council Secretariat  
3 April 2018

## Press Releases

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LLB handles liquor licence applications according to established procedures

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The following is issued on behalf of the Liquor Licensing Board:

In response to recent media reports that the Liquor Licensing Board (LLB) had given preferential treatment to its member when processing liquor licence applications, the LLB issued the following statement today (November 8):

The LLB has been handling every liquor licence application in accordance with the established procedures, and adopting the same yardstick by taking relevant departments and stakeholders' views into full consideration before making decisions.

According to Section 17(2) of the Dutiable Commodities (Liquor) Regulations (Regulations) (Cap 109B), the LLB will consider three criteria as laid down in the Regulations in considering each liquor licence application, including (a) whether the applicant is a fit and proper person to hold the licence; (b) whether the premises are suitable for selling liquor having regard to its location, structure, fire safety and hygienic conditions; and (c) whether in all the circumstances the grant of the licence is not contrary to the public interest. The LLB will also seek the views of relevant government departments, such as the Police, who will, based on their respective expertise and experience, review the case and provide impartial opinions to the LLB through the established mechanism. As regards the case of the restaurant in Sai Ying Pun mentioned in the media reports, taking the three above-mentioned criteria into consideration, the LLB decided to grant a one-year liquor licence to the restaurant with an additional licensing condition of keeping all doors and windows closed from 11pm to 9am the following day imposed, not a "clean licence" without conditions as mentioned in the media reports. Under the prevailing policy, if the LLB approves a liquor licence application, the liquor licence will only be issued to the applicant after the subject premises has obtained a valid restaurant licence.

In addition, three points mentioned in the media reports are not factually correct or may be misleading, which are clarified as follows. The restaurant concerned in Sai Ying Pun mentioned in the media reports did not have any record of being prosecuted for selling liquor without a licence according to Police information. The LLB has strictly followed the established procedures in handling the application of the concerned restaurant. Since the Police did not raise any objection to the applications by the restaurant concerned and the objectors did not express willingness to attend an open hearing, the LLB, thus, in accordance with the established procedures, considered the application at a closed-door meeting. The LLB member mentioned in the media reports, Mr Lo, was not present at the meeting and had not participated in the related discussion.

Moreover, the dinner gathering mentioned in the media reports was arranged by the LLB members themselves, and the members attended the gathering at their own expense and the bill was shared among them.

For the other restaurant next to the above restaurant mentioned in the media report, an additional licensing condition of keeping all doors and windows closed from 11pm to 9am the following day was also imposed on its liquor licence.

The LLB has currently adopted a two-tier reporting system in making a declaration of interest, including (a) the chairman and members shall register in writing their personal interests on their first appointment to the LLB, and annually thereafter, to the secretary of the LLB, with related information being uploaded to the register of interests at the LLB website; and (b) the chairman and members should declare their interests or withdraw from the meeting if necessary prior to the discussion of any applications which may involve conflict of interest.

As to whether the meeting minutes should be made open, since the minutes and the audiotape records are internal confidential documents of the LLB, the Code on Access to Information is not applicable. After taking legal advice, the LLB will not disclose the concerned documents and audiotape records.

Ends/Wednesday, November 8, 2017  
Issued at HKT 19:30

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**Relevant papers on issues relating to  
the operation of the Liquor Licensing Board**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Food Safety and Environmental Hygiene	15.2.2011 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	13.6.2013 (Item I)	<u>Agenda</u> <u>Minutes</u>
	8.4.2014 (Item V)	<u>Agenda</u> <u>Minutes</u>  Administration's follow-up paper on issues relating to the composition and functions of the Liquor Licensing Board, risk assessment of licence applications and the complaint handling mechanism (LC Paper No. <u>CB(2)2190/13-14(01)</u> )
	22.9.2017 (Item I)	<u>Agenda</u> <u>Minutes</u>
	13.11.2017*	Administration's response concerning the composition and operation of the Liquor Licensing Board (LC Paper No. <u>CB(2)290/17-18(01)</u> )

\* Issue date